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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 ERIC STRAUSS,

14 Defendant.

CASE NO. CR22-0065JLR

ORDER GRANTING
CERTIFICATE OF
APPEALABILITY

15 Before the court is a docketing notice from the Office of the Clerk of the United
16 States Court of Appeals for the Ninth Circuit, informing Defendant Eric Strauss that
17 “[n]o briefing schedule [for his appeal] will be set until this court and/or the district court
18 determines whether a certificate of appealability (COA) should issue.” (Not. (Dkt.
19 # 52).) The court GRANTS Mr. Strauss a certificate of appealability.

20 A certificate of appealability may issue only if the petitioner “has made a
21 substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). The
22 Supreme Court has recognized that the “substantial showing” standard for a certificate of

1 appealability is relatively low. *See Slack v. McDaniel*, 529 U.S. 473, 483 (2000). A
2 certificate of appealability should be granted for any issue that petitioner can demonstrate
3 is debatable among jurists of reason, could be resolved differently by a different court, or
4 is adequate to deserve encouragement to proceed further. *Jennings v. Woodford*, 290
5 F.3d 1006, 1010 (9th Cir. 2002). Further, the court must resolve doubts about the
6 propriety of a certificate appealability in the petitioner’s favor. *Id.*

7 The issue is whether the district court has authority to grant an extension of time
8 for filing a petition under 28 U.S.C. § 2255. (*See generally* 6/14/24 Order (Dkt. # 50).)
9 As another district court in this Circuit recently observed, the answer to this question is
10 “far from clear.” *United States v. Braswell*, No. 1:18-cr-00034-ADA-BAM-1, 2023 WL
11 7528575, at *2 (E.D. Cal. Nov. 13, 2023) (compiling cases). *But see United States v.*
12 *Asakevich*, 810 F.3d 418, 420-21 (6th Cir. 2016) (“No doubt, federal courts may permit
13 equitable tolling of the § 2255 statute of limitations. But that grace period applies only to
14 an actually filed § 2255 action.” (citation omitted)). The court finds that the question
15 presented is debatable among jurists of reason and should be answered by the Ninth
16 Circuit to provide guidance and clarity to the district courts.

17 Thus, Mr. Strauss has made the substantial showing necessary under 28 U.S.C.
18 § 2253(c)(2), and the court GRANTS Mr. Strauss a certificate of appealability. The court

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1 further DIRECTS the Clerk to send a copy of this order to the Ninth Circuit Court of
2 Appeals.

3 Dated this 31st day of July, 2024.

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5 JAMES L. ROBART
6 United States District Judge
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